

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

UNITED STATES OF AMERICA	§	
	§	
VS.	§	CRIM. NO. SA-09-CR-670-18
	§	
FRANCISCO ESPINOZA	§	

**MOTION FOR REVOCATION OF DETENTION ORDER AND
REQUEST FOR A DE NOVO EVIDENTIARY HEARING AND BOND**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the Defendant, FRANCISCO ESPINOZA, through his attorney, Christina Flores, pursuant to Title 18, United States Code, § 3145(b), respectfully requests that this Honorable Court revoke and/of amend the Order of Detention Pending Trial entered by the Honorable Judge J. Scott Hacker, United States Magistrate Judge for the Southern District of Texas, and thereafter enter an order setting conditions of release of Francisco Espinoza with an Unsecured Bond in the amount of Fifty thousand dollars in accordance with co-defendants Jose Omar Martinez, Robert Legoretta, Aron Hayslett, Ashby Cowart, Gerardo Martinez, Raul Sanchez and others. in support of said Motion, the Defendant respectfully shows unto this Honorable Court the following:

I.

STATEMENT OF FACTS

Francisco Espinoza stands accused of Conspiracy to possess with the intent to distribute five kilograms or more of Cocaine and one thousand kilograms or more of marijuana in violation of Title 21 USC §846. On September 2, 2009, the Pre Trial Services report recommended Defendant's release with a cash deposit of \$2,500.00 and one co-surety. A hearing was held

before the Honorable J. Scott Hacker, United States Magistrate Judge for the Southern District of Texas, who granted the Government's Request for Pretrial Detention on September 8, 2009.

II.

EVIDENCE OFFERED AT THE DETENTION HEARING

At the detention hearing the Government relied solely on the existence of an Indictment against Francisco Espinoza and its corresponding presumption, albeit rebuttable, against bond. The government further noted that Francisco Espinoza's brother in law is Ricardo Cardenas, the alleged head of the drug trafficking organization. The name Ricardo Cardenas has yet to be released in a redacted indictment. The government did not call any witnesses nor presented any documentary evidence. The government relied solely on the indictment, pretrial report and Francisco Espinoza's relationship to Ricardo Cardenas. Francisco Espinoza provided that he has no prior criminal history, is a United States Citizen and lifelong resident of Laredo, Webb County, Texas.

III.

REBUTTABLE PRESUMPTION

As stated earlier, the offense Francisco Espinoza is charged with raise a presumption for pretrial detention. Once the presumption is triggered, the Defendant bears, at a minimum, the burden of going forward with some credible evidence contrary to the statutory presumption (see *United States v. Alatishe*, 768 F.2d 364 (D.C. Cir 1985); *United States v. Jessup*, 757 F.2d 378 (1st Cir. 1985) and *United States v. Hurtado*, 779 F.2d 1468 (11th Cir. 1985); *United States v. Mercedes*, 254 F.3d 433, 436 (2d Cir. 2001) (nothing in "presumption cases," burden of persuasion remains with government; defendant "bears a limited burden of production... to rebut that presumption").) Francisco Espinoza's burden of production is "not a heavy one to meet";

rather, any evidence “favorable to a defendant that comes within a category listed in §3142(g) can suffice.” *United States v. Hammond*, 204 F. Supp. 2d 1157, 1162 (E.D. Wis. 2002). Francisco Espinoza conceded he was willing to wear an ankle monitor as a condition of his release. (Use of electronic bracelet “arguably” rebuts presumption. *U.S. v. O’Brian*, 895 F.2d 810 (1st Cir. 1990); see *Kin-Hong v. U.S.*, 926 F. Supp. 1180 (D. Mass. 1996); *US v. Leyba*, 104 F. Supp. 2d 1182 (S.D. Iowa 2000). Francisco Espinoza provided favorable evidence in more than one category. In a *De Novo* hearing, Francisco Espinoza will provide further evidence to show merits consideration for a bond.

IV.

REQUEST FOR AN EVIDENTIARY HEARING

A Magistrate’s “Order of Detention Pending Trial” is appealable pursuant to the provision of 18 U.S.C. § 3134(B). This Court is entitled to hear evidence at a de novo hearing on factors relevant to Francisco Espinoza’s Motion to Bond pursuant to 18 U.S.C. § 3142. Therefore, Francisco Espinoza respectfully requests that this Honorable Court set this matter down for an evidentiary hearing in order to bring forward witnesses and other documentary evidence. Defendant’s siblings and family members are prepared and willing to travel to San Antonio, Texas for said hearing in order to provide live testimony rebutting the presumption against pretrial detention. Specifically, Gabriela Ramirez, Elsa Lerma, Juan and Juanita Espinoza, Agustina Espinoza, Monica Mondragon, and Gabariela Mondragon will testify on Defendant’s behalf.

WHEREFORE, premises considered, Francisco Espinoza respectfully prays that this Honorable Court enter an Order revoking the Magistrate’s “Order of Detention Pending Trial”, and thereafter enter an Order setting conditions of release of Francisco Espinoza pending trial.

Respectful submitted,

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Attorney for FRANCISCO ESPINOZA

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing defendant's Motion to for Revocation was delivered to Sam L. Ponder, Assistant United States Attorney, San Antonio, Texas 78216 on the 15TH day of October, 2009, by electronic mail from the clerk of court.

/S/CHRISTINA FLORES
Christina Flores